

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

NAVELLIER & ASSOCIATES, INC. and  
LOUIS NAVELLIER,

Defendants

Civil Action No. 17-cv-11633

**DEFENDANTS' PROPOSED BRIEFING SCHEDULE REGARDING FINDINGS  
OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the Court's Order (DKT#325) counsel for the respective parties met and conferred by phone on September 14 and September 15, 2020 in an attempt to agree on a proposed briefing schedule, but were unable to reach agreement, therefore Defendants' counsel (who is traveling by car on vacation, and is dictating this response) hereby submits Defendants' position. Defendants' counsel proposed that the SEC file its proposed findings of fact and

conclusions of law by September 30, 2020 and that Defendants file their responsive findings of fact and conclusions of law by October 14, 2020, and if the SEC moves for leave to file a reply, and it is granted, Defendants be allowed to file a sur-reply. Defendants believe that the SEC has misled the Court on numerous occasions, including urging the Court not to await the U.S. Supreme Court's decision in *Liu* for guidance before issuing its Final Judgment regarding disgorgement. Therefore, Defendants would like an opportunity to respond to the SEC's assertions. Defendants' counsel also sought agreement from the SEC that it would not seek to expand, via discovery or "new evidence" that had not previously been submitted, in support and/or opposition to the previous briefing regarding disgorgement/Final Judgment. The record is the record and therefore is limited to the evidence presented by the respective parties, in support of their positions regarding disgorgement/Final Judgment at the time the parties submitted their positions regarding disgorgement/Final Judgment. The SEC is the party that sought remand for findings of fact and conclusions of law, based on the record presented at the time the Court issued its disgorgement/Final Judgment. The Court of Appeals remanded for the limited purpose of obtaining the Court's findings of fact and conclusions of law in light of *Liu* based on the record submitted by the parties at the time the Court issued its Final Judgment. Remand was ordered for the Court to issue findings of fact and conclusions of law based on the record, but taking into account and applying the guidance provided by the Supreme Court in *Liu*.

Plaintiff's counsel proposed a briefing schedule whereby it would submit its proposed findings of fact and conclusions of law by October 30, 2020 and Defendants would have two weeks thereafter to respond.

Because counsel were unable to agree, Plaintiff's counsel indicated that he would submit a proposed schedule indicating the parties' various positions, however because Defendants'

counsel is traveling, by car, and would be unable to review the proposed briefing schedule, he has dictated this response to indicate Defendants' position.

Respectfully submitted,

DATED: September 15, 2020

LAW OFFICES OF SAMUEL KORNHAUSER

By: /s/ Samuel Kornhauser (dictated)  
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Attorneys for Defendants

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1**

Pursuant to Local Rule 7.1, the undersigned met and conferred on September 14 with Plaintiff's counsel but were unable to reach agreement.

DATED: September 15, 2020

LAW OFFICES OF SAMUEL KORNHAUSER

By: /s/ Samuel Kornhauser  
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Attorney for Defendants

**CERTIFICATE OF SERVICE**

I certify that on September 15, 2020, a copy of the foregoing was electronically filed through the ECF system and will be sent electronically to all persons identified in the Notice of Electronic Filing and that paper copies will be sent to those indicated as non-registered participants.

Dated: September 15, 2020

/s/ Dan Cowan  
Dan Cowan